Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No 71-38

STANLEY V. TUCKER,
Petitioner

-v-

WILLIAM B. MOLLER, et al,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

STANLEY V. TUCKER
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PETITIONER
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

STANLEY V. TUCKER, **Petitioner**,

-v-

WILLIAM B. MOLLER, et. al.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Petioner prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals For the Second Circuit ent ered in the above entitled cases April 9, 1971 affirming an order made in the District Court, District of Connecticut, on Nov. 9, 1970 dismissing Petitioner's Complaint due to lack of "color of state law" to establish jurisdiction under the civil rights statutes.

CITATIONS TO THE OPINIONS BELOW:

The Opinion and Order the the District Court dismissing the Complaint of Petitioner is attached hereto as Appendix A. The Order of the 2 CA affirming the order of the District Court is attached hereto Appendix B.

JURISDICTION:

The order of the Court of Appeals was entered April 9, 1971. The jurisdiction of this Court is invoked under 28 USC 1254 (1).

QUESTION PRESENTED:

Petitioner appearing in the District Court on a Motion To Dismiss, with the allegations of the complaint deemed true for purposes of the Motion, was subjected to a lengthy personal attack using newspaper headlines from Calif. and other private and/or scandalous matter in a scurrilous attempt to prejudice the Trial Court and deny Petitioner a fair hearing. This scandalous attack was part of a conspiracy stretching from California to Connecticut for purposes of perpetuating Connecticut's illegal attachment laws by denial of Petitioners fundamental constitutional rights to a fair and impartial hearing on the defenses he was attempting to assert:

1. Where a complaint contains allegations of conspiracy and torts committed in furtherance of said conspiracy and jurisdiction claimed under 42 USC 1985 is "color of state law" necessary?

2. As a result of state-granted powers unique to Connecticut alone among the 50 states are the actions of Connecticut attorneys under "color of state law" when the attorneys committ torts to perpetuate their illegal state granted powers?

CONSTITUTIONAL PROVISIONS INVOLVED:

The constitutional provisions involved are the First, the Fourth, the Fifth, and Fourteenth Amendments to the United States Constitution all set forth herein Appendix C.

STATEMENT OF THE CASE:

Petitioner, Stanley V. Tucker, is a Building Contractor in Connecticut and sought via civil

rights complaint, C. A. No 13912, filed in the District Court-Conn. to enforce his rights to Due Process by challenging the constitutionality of Connecticut's pre-judgment attachment and Mechanics Lien laws.

Defendants acting in concert and conspiracy with various John Does in California conducted a scurrilous and malicious attack on Petitioner in hearing in open court and in pleadings filed seeking to:

1. Injure Petitioner and deny to Petitioner his First Amendment right to petition the courts for redress of grievances.

2. Injure Petitioner and deny Petitioner his Fourth Amendment right to privacy in his personal affairs.

3. Injure Petitioner and deny Petitioner his Fifth Amendment right to due process by fair and impartial trial on the merits.

4. Injure Petitioner and deny Petitioner his 14th Amendment rights to due process consisting of hearing and notice in respect to his good name and reputation.

5. Injure Petitioner and deny Petitioner his 14th Amendment Right to Due Process and Equal Protection of the laws by the above mentioned torts.

REASONS FOR GRANTING THE WRIT:

This case presents an opportunity for this Court to establish beyond doubt three important propositions which in Petitioner's view are important parts of the fundamental constitutional guarantees and have been squarly adopted by the

Courts of Appeal and by the U. S. Supreme Court but which the District Court below and the 2 CA refuses to apply in this case.

First : - AS A RESULT OF UNIQUE POWERS GRANTED CONN. ATTORNEYS MAKING THEM COMMISSIONERS OF THE SUPERIOR COURT ARE CONN. ATTORNEYS OFFICERS OF THE COURT THUS ACTING UNDER "COLOR OF STATE LAW"

That ample color of law exists under the facts of this case appears from simple examination of recent decisions in the U. S. Supreme Ct and other Circuit Courts of Appeal.

Wisconsin v Constantineau 91 S Ct 507 ; In Wisconsin, supra, the Police Chief of Hartford Wisconsin posted under color of S 176.26 Wis. Sta. the names of "excessive drinkers" thus violating the good name, reputation, honor, and integrity of Constantineau without the minimum due process of notice and hearing.

In this instant action Conn. attorneys acting in concert and conspiracy with California John Does attacked the good name and reputation of Petitioner by first posting in the public records of the Town Clerk of Hartford, Conn. liens and attachments that were fraudulent and without merit thus exposing the Petitioner to public ridicule and scorn as a debtor that would not pay his alleged debts. Further acting again in concert and conspiracy with California John Does the Conn. attorneys then in open federal court attacked the good name and reputation of Petitoner by use of private and/or scandalous matter from California news paper headlines. On a motion to dismiss under Federal law the allegations of the complaint

BEST AVAILABLE COPY.

are deemed true. The Defendant's conspiratorial acts were committed under color of Conn G.S. 51-85 and 52-89 which granted the attorneys special powers and privileges as officers of the court:

§ 51-85. Commissioners of the superior court

Each attorney at law admitted to practice within the state, while in good standing, shall be a commissioner of the superior court and, in such capacity, may, within the state, sign writs and subpoenas, take recognizances, administer oaths and take depositions and acknowledgments of deeds. (1949 Rev., § 7648.)

§ 52-89. Mesne process; contents and signature

Mesne process in civil actions shall be a writ of summons or attachment, describing the parties, the court to which it is returnable, the return day and the date and place for the filing of an appearance and shall be accompanied by the plaintiff's complaint. Any such writ may run into any county and shall be signed by a commissioner of the superior court or a judge or clerk of the court to which it is returnable.
(1969, P.A. 520, § 2.)

1969 Amendments

1969, P.A. 520, § 3, substituted, in the first sentence, the words "the return day and the date and place for the filing of an appearance" in lieu of "and the time and place of appearance" following "which it is returnable".

1969, P.A. 520, § 3, provided that "this act shall take effect October 1, 1969, provided forms in use prior to said date under the provisions of sections 52-89 and 52-90 of the general statutes, revised to 1965, may continue to be used until October 1, 1970".

Library references

Mesne process, see Conn. Practice Book Ann. by Kaye and Moller, Vol. 1, § 28.

Defendants sought via torts committed while acting under color of said statutes to enforce prejudgment attachments and Mechanics Liens that Petitioner contends are void and unconstitutional in light of .....Sniadach v Family Finance 395 U. S. 337, Jones Press v Motor Travel 176 NW 2d 87, Larson v Fetherston 44 Wis 2d 712, Tucker

v Burton 319 F Supp 567, Hall v Garson, 430 F 2d 430, Klim v Jones 315 F Supp 109, Lapprease v Raymours Furniture, 315 F Supp 716, McConnaghly v City of N. Y., NYC Civil Court Trial Term 1969.

The Defendants seeking to extort illegal gains by harsh, discriminatory attachments were at all times acting under color of Conn. G. S. 49-33, Mechanics Liens, and G. S. 52-279, 52-280, 52-285 the pre-judgment attachment statutes Petitioner claims are illegal and void.

Second : - NO COLOR OF STATE LAW IS NEEDED FOR FEDERAL JURISDICTION UNDER 42 USC 1985.

1985. Conspiracy to interfere with civil rights.—

Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny

to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

A long series of soundly established federal law has affirmed that the allegations of a conspiracy plus the wilful commission of torts in furtherance of said conspiracy invokes the jurisdiction of 42 USC 1985, civil rights.

A conspiracy of private persons to deprive a citizen of "equal protection of the laws, or of equal privileges or immunities under the laws" enacted under the U. S. Constitution " is within this section provided the conspirators commit an act in furtherance of the conspiracy whereby the person was injured in his person or property irrespective of whether the conspirators proceeded under color of authority of the state or otherwise."

Giles v Armstrong (CA 7) 207 F 2d 284

A CLASSIC SUPPORTING JURISDICTION UNDER THE CIRCUMSTANCES OF THIS CASE IS:

"Where appelles conspired to obstruct & defeat the due course of justice in Michigan by depriving Appellant of her right to be tried in accordance with due process of law the 6th Circuit Court of Appeals on Feb 8, 1949 affirmed civil rights jurisdiction."

McShane v Moldovan 172 F 2d 1016

A recent affirmation of civil rights jurisdiction over conspiracies of this type was made in the 9th Circuit on Oct 13, 1969:

"Suit may be brought against private individuals under Civil Rights Act if a conspiracy is established between them and the state or local officials who clearly acted under color of state law. 42 USC 1983, 42 USC 1985
Gillibeau v City of Richmond 417 F 2d 426

Third : - DECISIONS IN OTHER CIRCUITS, AND IN U. S. SUPREME COURT AFFIRM FEDERAL JURISDICTION

a. Wisconsin v Constantineau supra, see page four supra. Hall v Garson 430 F 2d 430.

In Hall, supra, again civil rights jurisdiction was affirmed under 42 USC 1983 w where a Texas landlady impounded a TV for unpaid rent. Both Klim, infra, and Hall are on all fours with the jurisdictional question herein.

. Klim v Jones 315 F Supp 109 USDC N.D. CALIF

Again civil rights jurisdiction, 42 USC 1983, affirmed where California Inkeepers Lien Law was held unconstitutional. In this case the civil rights jurisdiction over Jones, the innkeeper, was based on Jones impounding and attaching the personal clothing and possessions over $5 in rent due. July 17, 1969.

. LaPrease v Raymours 315 F Supp 716 USDC NDNY

Again civil rights jurisdiction, 42 USC 1983, was affirmed over the New York replevin sa statute. The Raymours Furniture Co repossed or made a "prejudgment attachment" of various items of kitchen furniture. This procedure was held violative of due process. The color of law - the replevin statute authorizing the replevin. This case, too, is "on all fours" with this instant action where Conn. Attorneys acting under statutes giving them special power to issue Writ of Attachments without notice or hearing violated Petitioners rights by levying Writs of attachment and mechanics liens on his property without notice or hearing. Then acting in concert and conspiracy with the

California Defendants, the Conn. Defendants sought to obstruct and hamper the due course of justice using their authority as attorneys derived from G. S. 51-85 to commit torts against Petitioner to deny to Petitioner due process in Federal Court.

d. Gillibeau v City of Richmond 417 F2d 426

Again civil rights jurisdiction, 42 USC 1983, upheld over a board of supervisors, city policemen and others who violated the 4th amendment right of Gillibeau by unreasonable search.

Petitioner contends in this action Defendants violated his 4th amendment rights to privacy by bringing out various details of his private life, with malice and falsity for purpose of intimidating Petitioner from testifying freely, truthfully, and for the purpose of hindering, obstructing, and defeating the due course of justice in the District Court. The tort = violation of Petitioner's 4th amendment rights. The purpose of the conspiracy = to deny to Petitioner his 5th and 14th amendment rights to due process.

e. Hill v Toll 320 F Supp 185 Dec 9, 1970

Private bailbondsmen acting under color of a Penn. statute gave Toll a savage beating for evading a bail bond during an arrest and jailing . CIVIL RIGHTS JURISDICTION UPHELD OVER THE PRIVATE BAIL BONDSMEN AND ALSO THE WARDEN. Hill, supra, fits four square the jurisdictional situation herein. The color of law was provided herein where Conn. attorneys conspired to levy illegal attachments.

CONCLUSION:

THIS IS A CASE OF FIRST IMPRESSION TO THE UNITED STATES SUPREME COURT REGARDING AN IMPORTANT QUESTION OF CONSTITUTIONAL LAW UNRESOLVED IN CONN. AND IN THE 2ND C.A.

Where Defendants acted under color of special powers that Connecticut alone among the fifty states grants to attorneys as a priviledged class making them Commissioners of the Superior Court and Officers of the Courts then surely there is sufficient color of state law generated to satisfy the Civil Rights Statutes, 42 USC 1983 and 42 USC 1985.

When Connecticut attorneys commit torts in concert and conspiracy with out of state defendants(California John Does) to deny to Petitioner his 1st, 4th, 5th and 14th Amendment rights then no color of state law is needed to satisfy the conspiracy clauses of 42 USC 1985.

Let justice be done and this case reversed and remanded for trial on the merits.

For these reasons Petitioner prays that the Writ be granted.

Respectfully submitted:

By_____
STANLEY V. TUCKER
PETITIONER

APPENDIX A: - RULING IN THE DISTRICT COURT

This civil rights suit was brought pro se by plaintiff Tucker seeking damages and inunctive relief against two lawyers and the law firm of which they are both members. Tucker alleges that tortious conduct by the defendants has deprived him of"due process and equal justice" in violation of 42 USC 1983. He also alleges a conspiracy among these defendants and others not known to deprive him of constitutional rights by tortious conduct in violation of 42 USC 1985. Defendants have moved for dismissal.

The controversy here arises out of proceedings in connection with three other cases now pending in this court, also instituted by Tucker pro se. TUcker v Conn, Mason Contractors Inc., C. No 13, 785; Tucker v Maher, Civ No 13, 786; Tucker v Anderson, Civ No 14787. The basis of Tucker's claim in the instant case is his contention that the defendant attoryneys individually and in concert with each other and with others not known, libeled and slandered him in briefs and oral argument on motions to dismiss the earlier three suits.

On this motion to dismiss, plaintiff is entitled to that extra measure of indulgence appropriate to pro se pleadings for the protection of civil rights Beard v. Stephens, 372 F 2d 685, 698 (5th Cir. 1967), and the court must assume the truth of his factural allegations. Cooper v Pate, 378 U. S. 546 (1944) (per curiam). Conclusions of law stated in the complaint, however, are not presumed to be accurate, Mississippi Valley Structural Steel Co. v. Huber, Hunt & Nichols, Inc. 295 F. Supp 139, 140 (S. D. Ill. 1969), and where it appears to a certainty that plaintiff would be entitled to no relief under any state of facts that would be

proved in support of his claim, the complaint should be dismised. Holmes v NYC Housing Auth. 398 F 2d 262, 265 (2d Cir 1968). That is what must be done in this case.

To state a claim upon which relief may be granted under the Civil Rights Act, 42 USC 1983, 1985, the acts alleged must not only amount to deprivations of a constitutional right, see Travers v Paton, 261 F Supp 110 (D. Conn. 1966), but also be done "under color of" state law. See Adickes v S. H. Kress & Co. 398 U. S. 144, 161 (1970); Jobson v Henne, 355 F 2d 129, 133 (2 d Cir 1966). It is now weell settled that an attorney performing in his professional capacity, though an officer of the court, is not acting as a state officical or under color of state law within the meaning of the Civil Rights Act. Myers v Couchara, 313 F. Supp. 873 (E.D. Penn 1970); Jemzura v Belden, 281 F. Supp 200; Kregger v Posner, 248 F. Supp 804, 806 (E. D. Mich 1966). Clearly the defendants here, in brief and oral argument before the court in the prior cases brought by Tucker, were acting only as private individuals in a professional capacity. As such their conduct genarated no coloration of state law sufficient to permit relief under the Civil Rights Act.

Accordingly, the motion to dismiss the complaint is hereby granted.

SO ORDERED.

Dated at Hartford, Connecticut, this 30th day of September, 1970.

M. JOSEPH BLUMENFELD
UNITED STATES DISTRICT JUDGE

APPENDIX B: B1

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 716—September Term, 1970.

(Argued March 19, 1971 Decided April 9, 1971.)

Docket No. 35685

STANLEY V. TUCKER,

Plaintiff-Appellant,

—v.—

WILLIAM R. MOLLER, EDMUND T. CURRAN, REGNIER, MOLLER & TAYLOR, a Partnership, JOHN DOES, A, B, C, and D,

Defendants-Appellees.

Before:

MOORE and SMITH, *Circuit Judges,*
and TIMBERS,* *District Judge.*

Appeal from judgment of dismissal of civil rights action in the United States District Court for the District of Connecticut, M. Joseph Blumenfeld, *Judge.* Affirmed.

STANLEY V. TUCKER, *Appellant Pro Se.*

PETER C. SCHWARTZ, Hartford, Conn. (Gordon, Muir & Fitzgerald, Hartford, Conn.), *for Defendants-Appellees.*

* Chief Judge, United States District Court for the District of Connecticut, sitting by designation.

PER CURIAM:

Plaintiff, proceeding *pro se*, appeals from dismissal by the United States District Court for the District of Connecticut, M. Joseph Blumenfeld, *Judge*, —— F. Supp. —— (D. Conn. 1970) of his civil action against attorneys representing opposing parties in actions attacking the constitutionality of Connecticut attachment statutes. We affirm on the opinion of Judge Blumenfeld below, for lack of action "under color of state law" to base claims under the civil rights statutes.

APPENDIX C: - CONSTITUTIONAL PROVISIONS

AMENDMENTS[1]

DDITION TO AND AMENDATORY OF THE CONSTITUTION OF THE UNITED STATES

by Congress and Ratified by the Several States, Pursuant to the Fifth Article of the Original Constitution

AMENDMENT 1[2]

Religious and political freedom.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV—SEARCHES AND SEIZURES

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V—CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AFFIDAVIT OF SERVICE PURSUANT TO
SUPREME COURT RULE 33 sub 3 (c)

STATE OF CONN.)
COUNTY OF HARTFORD) ss

Stanley V. Tucker, hereby deposes and says:

That on this ____ day of May 1971 I have served the within PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT on Peter C. Swartz, Esquire, 39 Layfayette Street, Hartford Conn. 06106 by depositing (3) copies thereof enclosed in a sealed envelope, properly addressed with stamps appropriate affixed thereto and deposited same in a post office deposit mail box in Hartford, Conn.

By _____
STANLEY V. TUCKER

Before me, Notary Public in said State and County personally appeared STAANLEY V. TUCKER, known to me, and in my presence made oath to and executed the above instrument.

Dated: _____ By _____
NOTARY PUBLIC

My commission expires _____

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

PETER C. SCHWARTZ,
Counsel for Respondents
39 Lafayette Street
Hartford, Connecticut 06106

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Petitioner,

v.

WILLIAM R. MOLLER, EDMUND T. CURRAN, REGNIER, MOLLER & TAYLOR, a partnership, John Does, A, B, C and D,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

The respondents pray that a writ of certiorari does not issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above case on April 9, 1971.

The Question Presented

Are the averments of the complaint filed with the United States District Court for the District of Connecticut sufficient to constitute a good claim for violation of, and to

invoke relief under, 42 U.S.C. § 1983 and 42 U.S.C. § 1985? The complaint is printed in the Appendix hereto.

The Statement of the Case

On June 19, 1970, the petitioner, Stanley V. Tucker, a citizen of the State of Connecticut, caused to be filed a complaint in the United States District Court for the District of Connecticut against several defendants, citizens of the State of Connecticut. Said complaint, as amended, is predicated upon alleged violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985, and seeks injunctive relief and recovery of money damages. It is claimed that the defendants "chose to file briefs replete with libel and used slander", and violated the canons of ethics in other lawsuits pending before the United States District Court for the District of Connecticut.

The respondents moved for dismissal of the complaint on July 20, 1970. The grounds set forth in support of this motion were that the complaint described no state action nor conduct under color of law, that the complaint did not show any violation or deprivation of any federal constitutional or statutory right as required under the Civil Rights Act, and that the court lacked jurisdiction.

The District Court (Blumenfeld, J.) ordered dismissal on the grounds that "clearly the defendants here, in brief and oral argument before the court in the prior cases brought by Tucker, were acting only as private individuals in a professional capacity. As such their conduct generated no coloration of state law sufficient to permit relief under the Civil Rights Act." The District Court determined that Tucker would be entitled to no relief under any state of facts that could be proved in support of his claim.

The United States Court of Appeals for the Second Circuit, in a per curiam decision, affirmed the opinion of the District Court.

The petitioner now seeks review of the decision of the United States Court of Appeals for the Second Circuit.

Reasons for Denying the Writ

I. The petition fails to raise substantial and important Federal questions. The decision of the United States Court of Appeals for the Second Circuit is not in conflict with the decisions of another court of appeals on the same matter, nor is the decision in any way in conflict with applicable decisions of this court. The decision of the United States Court of Appeals for the Second Circuit does not constitute a departure from the accepted and usual course of judicial proceedings so as to call for an exercise of this court's power of supervision.

II. It is clear from the complaint that, whatever the named respondents are alleged to have done in the other lawsuits pending before the United States District Court for the District of Connecticut with respect to the claimed libel, slander and breach of ethics, their acts were performed in their professional capacities as attorneys.

It is well settled that an attorney performing in his professional capacity, though an officer of the court, is not acting under color of law within the meaning of the Civil Rights Act. *Myers* v. *Couchara*, 313 F. Supp. 873 (E. D., Pa., 1970); *Jemzura* v. *Belden*, 281 F. Supp. 200 (N. D., N. Y., 1968); *Kregger* v. *Posner*, 248 F. Supp. 804 (E. D., Mich., 1966); *Meier* v. *State Farm Mutual Automobile Insurance Company*, 356 F. 2d 504 (7 CCA, 1966), certiorari denied 87 S. Ct. 151, 385 U. S. 875, 17 L. Ed. 2d 102; *Sarelas* v. *Porikos*, 320 F. 2d 827 (7 CCA, 1963), certiorari denied 84 S. Ct. 519, 375 U. S. 985, 11 L. Ed. 2d 473; *Skolnick* v. *Martin*, 317 F. 2d 855 (7 CCA, 1963), certiorari denied 84 S. Ct. 199, 375 U. S. 908, 11 L. Ed. 2d 146, rehearing denied 84 S. Ct. 440, 375 U. S. 960, 11 L. Ed. 2d 319; *Drexler* v. *Walters*, 290 F. Supp. 150 (D. C., Minn., 1968); *Pugliano*

v. *Staziak*, 231 F. Supp. 347 (W. D., Pa., 1964), aff'd 345 F. 2d 797; *Jones* v. *Jones*, 410 F. 2d 365 (7 CCA, 1969); *Brown* v. *Dunne*, 409 F. 2d 341 (8 CCA, 1969); *Reinke* v. *Richardson*, 279 F. Supp. 155 (E. D., Wisc., 1968); *Johnson* v. *Kreider*, 264 F. Supp. 188 (M. D., Pa., 1967); *Peake* v. *County of Philadelphia*, 280 F. Supp. 853 (E. D., Pa., 1968); *Jackson* v. *Hader*, 271 F. Supp. 990 (W. D., Mo., 1967); *Mulligan* v. *Schlachter*, 389 F. 2d 231 (6 CCA, 1968); *Vance* v. *Robinson*, 292 F. Supp. 786 (W. D., N. C., 1968); *Pritt* v. *Johnson*, 264 F. Supp. 167 (M. D., Pa., 1967); *Cooper* v. *Wilson*, 309 F. 2d 153 (6 CCA, 1962); *Kenney* v. *Fox*, 232 F. 2d 288 (6 CCA, 1956).

The allegations of the Complaint, even if assumed to be true, can only give rise to facts showing that the respondents were acting merely as private individuals and not under color of law. The allegations of the Complaint, even if assumed to be true, can only give rise to facts showing that the respondents were not acting while clothed with authority of the State of Connecticut or of the federal government, nor did they purport to act under any such authority. The fact that the respondents are Commissioners of the Superior Court is wholly irrelevant and immaterial with respect to their alleged conduct in the United States District Court for the District of Connecticut.

The decision of the United States Court of Appeals for the Second Circuit should not be disturbed. It is logical and well founded. The decision is in line with, and gives respect to the well reasoned rulings of other courts.

III.

Only rights secured by the Constitution and the statutes of The United States are protected by the Civil Rights Act. *Bradford* v. *Lefkowitz*, 240 F. Supp. 969 (S. D., N. Y., 1965); *Stiltner* v. *Rhay*, 322 F. 2d 314 (9 CCA, 1963), certiorari denied 84 S. Ct. 678, 376 U. S. 920, 11 L. Ed. 2d

615, rehearing denied 84 S. Ct. 972, 376 U. S. 959; 11 L. Ed. 2d 978.

It is clear that the acts complained of do not amount to violation of civil rights.

The following classes of tort are merely illustrative examples of private wrongs for which federal protection is not afforded: alleged slander of title to real estate, *Ream* v. *Handley,* 359 F. 2d 728 (7 CCA, 1966); loss of job allegedly due to slander, *Hopkins* v. *Wasson,* 227 F. Supp. 278 (D. C., Tenn., 1962); alleged publication of defamatory matter, *Grubbs* v. *Slater,* 144 F. Supp. 554 (W. D., Ky., 1956); alleged libel and slander, *Mattheis* v. *Hoyt,* 136 F. Supp. 119 (W. D., Mich., 1955).

The following cases, with particular reference to alleged misuse of judicial rights or remedies or alleged interference with judicial rights or remedies, demonstrate that no federal protection is afforded: alleged libelous newspaper article causing denial of fair trial, *Kamsler* v. *Chicago American Publishing Company,* 352 F. 2d 57 (7 CCA, 1965); alleged fraud in litigation, *Campo* v. *Niemeyer,* 182 F. 2d 115 (7 CCA, 1950); alleged derogatory remark of prosecuting attorney in open court, *Heller* v. *Roberts,* 386 F. 2d 832 (2 CCA, 1967); alleged perjured, slanderous testimony of witness and statements of counsel, *Johnson* v. *Stone,* 268 F. 2d 803 (7 CCA, 1959); alleged false statements in brief filed by state solicitor general, *Morgan* v. *Sylvester,* 125 F. Supp. 380 (S. D., N. Y., 1954); alleged defamatory remarks of bailiff and defense counsel, *Skolnick* v. *Spolar,* 317 F. 2d 857 (7 CCA, 1963).

The Civil Rights Act's protection does not extend to alleged breaches of ethics. *Christman* v. *Commonwealth of Pennsylvania,* 275 F. Supp. 434 (W. D., Pa., 1967); *Ginsburg* v. *Stern,* 125 F. Supp. 596 (W. D., Pa., 1954), aff'd 222 F. 2d 245.

IV.

To state a claim upon which relief may be granted under 42 USC § 1983, the acts alleged must be done under color of law. *Adickes* v. *S. H. Kress & Co.*, 398 U. S. 144, 90 S. Ct. 1598, 26 L. Ed. 2d 142 (1970). Conversely, 42 USC § 1983, does not apply to alleged invasions of individuals by private individuals not acting under color of law. *Williams* v. *Yellow Cab Company of Pittsburgh*, 200 F. 2d 302 (3 CCA, 1952); *Shemaitis* v. *Froemke*, 189 F. 2d 963 (7 CCA, 1951). Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

To state a claim upon which relief may be granted under 42 USC § 1985, the acts alleged must be done under color of law. *Campbell* v. *Glenwood Hills Hospital*, 224 F. Supp. 27 (D. C. Minn., 1963); *Wallach* v. *Cannon*, 357 F. 2d 557 (8 CCA, 1966); *Huey* v. *Barloga*, 277 F. Supp. 864 (N. D., Ill., 1967); *Elder* v. *Consolidated Freightways Corp. of Del.*, 289 F. Supp. 630 (D. C., Minn., 1968); *Koch* v. *Zuieback*, 316 F. 2d 1 (9 CCA, 1963); *Hoffman* v. *Hadden*, 268 F. 2d 280 (9 CCA, 1959); *Henig* v. *Odorioso*, 385 F. 2d 491 (3 CCA, 1967); certiorari denied 88 S. Ct. 1269, 390 U. S. 1016, 20 L. Ed. 2d 166, rehearing denied 88 S. Ct. 1814, 391 U. S. 929, 20 L. Ed. 2d 671. Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

V.

The respondents further contend that there are additional grounds, in addition to those expressly cited in the decisions below, which constitute valid alternate bases for denying the writ of certiorari. These other grounds were pressed below by the respondents.

To state a claim upon which relief may be granted under 42 U.S.C. § 1983, the acts alleged must amount to a deprivation of a constitutional right. *Travers* v. *Paton*, 261 F.

Supp. 110 (D. C., Ct., 1966); *Sarelas* v. *Sheehan,* 326 F. 2d 490 (CCA 7, 1963), certiorari denied, 84 S. Ct. 1334, 377 U. S. 932, 12 L. Ed. 2d 296; *Love* v. *Navarro,* 262 F. Supp. 520 (C. D., Calif., 1967); *Colon* v. *Greico,* 226 F. Supp. 414 (D. C., N. J., 1964). In essence, Congress did not, and cannot, "create a federal cause of action in favor of persons (allegedly) injured through abridgment of rights which are not federal constitutional rights". *Whittington* v. *Johnson,* 102 F. Supp. 352, 353 (M. D., Ala., 1952). Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

To state a claim upon which relief may be granted under 42 U.S.C. § 1985, the acts alleged must amount to a deprivation of a constitutional right and must give rise to discrimination. *Huey* v. *Barloga,* 277 F. Supp. 869 (N. D., Ill., 1967); *Watson* v. *Devlin,* 167 F. Supp. 638 (E. D., Mich., 1958). Property rights are not federally protected, *Van Daele* v. *Vinci,* 294 F. Supp. 71 (N. D., Ill., 1968); but are left to the protection of the state. *Sinchak* v. *Parente,* 262 F. Supp. 79 (W. D., Pa., 1966); *Swift* v. *Fourth National Bank of Columbus,* Ga., 205 F. Supp. 563 (M. D., Ga., 1962). Petitioner has failed to set forth in his complaint facts sufficient to meet this requirement.

VI.

The allegations of the complaint do not set forth a claim involving a federal question as is required to establish jurisdiction under 28 U.S.C. § 1331. The allegations, on the face of the complaint do not disclose any right of Petitioner which will be sustained if the Constitution and laws of the United States are given one construction, and defeated if they are given another construction. *Martin* v. *Wyzanski,* 262 F. Supp. 925 (D. C., Mass., 1967); *Gully* v. *First National Bank,* 57 S. Ct. 96, 299 U. S. 109, 81 L. Ed. 70 (1936).

As previously set forth in argument, the allegations of the complaint do not set forth a claim of deprivation of federal constitutional rights under the Civil Rights Act as is required to establish jurisdiction under 28 USC § 1343.

The allegations of the Complaint do not set forth diversity of citizenship as is required to establish jurisdiction under 28 USC § 2201 and 28 USC § 2202. *Productions* v. *Mosley,* 190 F. 2d 904 (9 CAA, 1951).

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the petition for a writ of certiorari should be denied.

PETER C. SCHWARTZ,
Counsel for Respondents
39 Lafayette Street
Hartford, Connecticut 06106

APPENDIX

UNITED STATES DISTRICT COURT,
DISTRICT OF CONNECTICUT.

Civil Action No. 13912

JURY TRIAL DEMANDED

STANLEY V. TUCKER,

Plaintiff,

VS.

WILLIAM R. MOLLER, Esq., 41 Lewis St., Hartford Conn., EDMUND T. CURRAN, Esq., 41 Lewis St., Hartford, Conn., REGNIER, MOLLER & TAYLOR, a partnership, 41 Lewis St., Hartford Conn.,

JOHN A. DOE, address unknown,
JOHN B. DOE, address unknown,
JOHN C. DOE, address unknown,

JOHN D. DOE, address unknown, all four who made certain statements to defendants Moller and Curran and others,

Defendants.

COMPLAINT

1. This is an action for injunctive relief and damages authorized by 42 USC Sec. 1983 to secure rights, privileges and immunities secured by the Constitution and laws of the United States.

2. Jurisdiction is conferred on this Court by 28 USC Secs. 1331, 1343(3), 1343(4), 2201, and 2202, and Local Rule of Civil Procedure No. 2(d)1.

3. This action seeks injunctive relief, both temporary and permanent, pursuant to 42 USC Sec. 1983 and 28 USC

Secs. 1331, 1343(3), (4), restraining the defendants from further harassment, intimidation, libel, slander, and other injury of the plaintiff, and restraining the defendants from further conspiracy to harass, intimidate, libel, slander and otherwise injure plaintiff.

4. The plaintiff is an adult citizen of the United States and of the State of Connecticut, residing in the Town of Hartford. The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000.00).

5. Defendant Moller is an attorney at law, duly licensed to practice law in the State of Connecticut, who has studied carefully the jurisdictional provisions of Title 28, United States Code, the Federal Rules of Civil Procedure, and the local rules of this Court. He has been admitted to practice before this Court, and has taken an oath to support the Constitution and laws of the United States of America, to discharge faithfully the duties of a lawyer, to demean himself uprightly and according to law and the recognized standards of ethics of the profession, and he has signed the roll of attorneys of this Court and paid the fee required by law.

6. Defendant Curran is an attorney at law, duly licensed to practice law in the State of Connecticut, who apparently has not studied carefully the jurisdictional provisions of Title 28, USC, the Federal Rules of Civil Procedure, and the local rules of this Court. He has not, according to the records of this Court, been admitted to practice before this Court, although he represents that he was admitted to practice before the bar of this Court in 1962. He apparently has not taken any oath to support the Constitution and laws of the United States of America, to discharge

faithfully the duties of a lawyer, to demean himself uprightly and according to law and the recognized standards of ethics of the profession, and he apparently has not signed the roll of attorneys of this Court nor paid the fee required by law.

7. Defendants John A. Doe, John B. Doe, John C. Doe, and John D. Doe are unknown to the plaintiff at this time. They are believed to be citizens of the United States, and residents of the State of Connecticut and/or the State of California.

8. On or before May 1, 1970, defendants John A. Doe, John B. Doe, John C. Doe, and John D. Doe furnished some information to defendant law firm Regnier, Moller & Taylor, and defendants Moller and Curran, and conspired with these defendants to harass, intimidate, libel, slander, delay justice for, and otherwise injure plaintiff Tucker.

9. On or about May 1, 1970, in furtherance of the above conspiracy, defendant Moller caused to be written memoranda "in support of defendants' motion to dismiss" in Civil Actions Nos: 13785, 13786, 13787 previously filed in this Court in good faith by plaintiff Tucker, these memoranda containing, by design of the defendants, certain false and defamatory allegations impugning the character and reputation of plaintiff Tucker. The allegations were entirely beyond the scope of defendant Moller's authority and responsibilities to his clients, were without any basis in fact whatsoever, and were made maliciously, with reckless disregard of the rights and privileges of plaintiff Tucker and the possible adverse affects of the allegations on plaintiff Tucker. The allegations were made in total disregard of defendant Moller's oath of office both as an attorney and as an officer of this Court, and were made for the illegal and immoral purposes of delaying and injuring the causes

represented by plaintiff in this Court and causing embarrassment, shame, nervousness, mental pain and anguish, harassment, and intimidation of plaintiff Tucker, pro se, to discourage and hamper him in his pro se attempts to gain his Constitutional guarantees of due process and equal justice under law, and to encourage others to harass and intimidate plaintiff Tucker by filing attachments against his property, denying him credit, and otherwise injuring him.

10. All of the actions of defendant Moller delineated above were known by defendant Moller to be immoral, unethical, illegal, and entirely without the scope of Rule 1 of the Federal Rules of Civil Procedure. The said actions are all the more reprehensible because they were taken by an officer of this Court against a pro se plaintiff in the guise of making representations about plaintiff's "credibility" when defendant Moller knew, because of his study of the Federal Rules of Civil Procedure and Title 28, USC, that there can be no proper attack on credibility in a motion to dismiss, since in a motion to dismiss, the allegations in the Complaint must be considered as true.

11. The above actions of defendant Moller were done for the unethical, immoral, and illegal purpose of confusing and delaying this Court in defendant Moller's attempt to preserve, as long as possible, an unconstitutional advantage for alleged creditors over alleged debtors in Connecticut.

12. On, before, and after May 1, 1970, defendant law firm Regnier, Moller & Taylor, defendants Moller and Curran, and others unknown to the plaintiff conspired to unethically and unlawfully obtain exclusive representation of all defendants in this Court in Civil Actions Nos. 13785, 13786, and 13787, for lucre and malice toward

plaintiff Tucker, and in order that defendants might be able to operate freely in their wrongful and illegal acts against plaintiff Tucker, without interference or remonstrance by other more ethical lawyers defending some of the defendants in said Civil Actions Nos. 13785, 13786, and 13787.

13. On or about May 25, 1970, defendant Curran, in furtherance of the above conspiracy of the defendants, made false, misleading, erroneous and immaterial allegations impugning the character and reputation of plaintiff Tucker while purportedly addressing himself to the matters under consideration in this Court. The allegations were entirely beyond the scope of defendant Curran's authority and responsibility to his clients, were without any basis in fact whatsoever, and were made maliciously, with reckless disregard of the rights and privileges of plaintiff Tucker. The allegations were made in total disregard of defendant Curran's oath of office as an attorney, and were made for the illegal and immoral purposes of delaying and injuring the causes represented by plaintiff pro se in this Court and causing embarrassment, shame, nervousness, mental pain and anguish, harassment, and intimidation of plaintiff Tucker, pro se, to discourage and hamper him in his attempts to gain his Constitutional guarantees of due process and equal justice under law, and to encourage others to harass and intimidate plaintiff Tucker by filing unconstitutional attachments against his property, denying him credit, and otherwise injuring him.

14. All of the actions of defendant Curran delineated above should have been known by defendant Curran to be immoral, unethical, illegal, and entirely without the scope of Rule 1 of the Federal Rules of Civil Procedure. The said actions are all the more reprehensible because they were taken by a lawyer against a pro se plaintiff, in

the guise of making representations about plaintiff's "credibility" when defendant Curran should have known, because of his experience as a lawyer, that there can be no proper attack on credibility in motion to dismiss, since in a motion to dismiss, the allegations in the Complaint must be considered as true.

15. The above actions of defendant Curran were done for the unethical, immoral, and illegal purpose of confusing and delaying this Court in defendant Curran's attempt to emulate his superiors, including defendant Moller, in their attempt to preserve, as long as possible, an unconstitutional advantage for alleged creditors over alleged debtors in Connecticut.

16. The above actions of the defendants were done deliberately, with malice aforethought in concert with each other, and others, under color of state statutes, ordinances, customs, regulations, and usage, to prevent plaintiff from exercising his rights, privileges, and immunities under the Constitution and its first, fifth, and fourteenth amendments and the federal laws, and to punish illegally the plaintiff for so exercising his said rights, privileges and immunities, to his great harm.

17. The aforesaid acts of the defendants in concert constituted violations of the Constitution and laws of the United States, in that the plaintiff has been harassed, hampered, and intimidated in his exercise of his right to free speech, to petition for redress of grievances, to enjoy property with the protection of due process of law, to enjoy the equal protection of the law, and to enjoy liberty and the pursuit of happiness.

18. As a direct and proximate result of the aforesaid acts of the defendants, the plaintiff has suffered great

mental pain and anguish, from then until now and he will continue to so suffer in the future; and he has lost and will lose in the future large sums of money by reason of having been greatly humiliated and held up to public scorn and derision, caused to suffer mental pain and anguish, had had, and will continue to have, severe loss of credit, all as a result of the malicious acts of the defendants.

WHEREFORE plaintiff demands judgment against each of the defendants in the amount of Eighty Five Thousand Dollars ($85,000.00) plus the costs of the action, disbursements, and reasonable attorneys' fees, if any there be, and plaintiff further demands punitive damages against each defendant in the amount of an additional Eighty Five Thousand Dollars ($85,000.00), and he further demands such other additional relief as to the Court seems just, proper, and equitable under the circumstances:

By Stanley V. Tucker
Stanley V. Tucker, Plaintiff
963 Capital Ave.
Hartford, Conn. 06106
523-7742

(Verified June 19, 1970.)